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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/29/2006

Maik Binas

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STAAS & HALSEY LLP

SUITE 700

1201 NEW YORK AVENUE, N.W.

WASHINGTON, DC 20005

EXAMINER

DONADO, FRANK E

ART UNIT

PAPER NUMBER

2617

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/573,975	BIENAS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	FRANK DONADO	2617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15 and 20-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27 and 28 is/are allowed.
- 6) ☒ Claim(s) 15 and 20-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 3/9/11 has been entered. Claims 22 and 24 have been amended. Claims 1-14 and 16-19 have been cancelled. No claims have been added. Claims 15 and 20-28 are currently pending in this application, with claims 15 and 27 being independent.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c)

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and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 15 and 20-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marinier (**US PG Publication 2004/0214584**), in view of Santhoff (**US PG Publication 2004/0002346**).

Regarding claim 15, Marinier teaches a method of determining a local position of a first mobile radio communication terminal device in a radio cell of a radio network of a radio communication system, wherein the radio cell is fixed by a base station, the method comprising: before emitting a retrieval signal, emitting a preceding inquiry signal from the first mobile radio communication terminal device requesting that each second mobile radio communication terminal device send an acknowledgement signal indicating a readiness thereof to participate in determination of the local position of the first mobile radio terminal device, wherein the preceding inquiry signal is a broadcast radio signal (**A request is broadcast to a plurality of mobile devices requesting consent to use their positioning information, where, upon consent given by said mobile devices, said positioning information is used to determine a position of a target wireless device, Paragraph 13**); Marinier does not teach transmitting, from the first mobile radio communication terminal device, after receipt of the acknowledgement signal, a retrieval signal retrieving position information of the second mobile radio communication terminal device that sent the received acknowledgement signal; transmitting position information by at least one radio signal from at least one second mobile radio communication terminal device, the location of which is known either to the at least one second

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mobile radio communication terminal device or to the radio network, and which is either in the radio cell or in another radio cell, the at least one radio signal being transmitted to the first mobile radio communication terminal device via either a direct radio connection or an indirect radio connection via the radio network; inferring a distance between the first mobile radio communication terminal device and the at least one second mobile radio communication terminal device on the basis of the signal propagation time of the at least one radio signal. Santhoff teaches transmitting, from the first mobile radio communication terminal device, after receipt of the acknowledgement signal, a retrieval signal retrieving position information of the second mobile radio communication terminal device that sent the received acknowledgement signal (**A mobile device requests position information from other mobile devices, Paragraph 50, lines 1-12 and Step 510 of Figure 6**); transmitting position information by at least one radio signal from at least one second mobile radio communication terminal device, the location of which is known either to the at least one second mobile radio communication terminal device or to the radio network, and which is either in the radio cell or in another radio cell (**Said mobile devices are location-aware mobile devices that are located in a cell and transmit said position information, Paragraph 50, lines 17-21, Paragraph 54, lines 1-7 and Paragraph 34**), the at least one radio signal being transmitted to the first mobile radio communication terminal device via either a direct radio connection or an indirect radio connection via the radio network (**Said position information is transmitted to said requesting mobile device via a direct connection, Paragraph 54**); inferring a distance between the first mobile radio communication terminal device and the at least one second mobile radio communication terminal device on the basis of the signal propagation time of the at least one radio signal (**Timing information included in**

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**said position information is used by said requesting mobile device to determine a distance between said requesting mobile device and said other mobile devices, Paragraph 56).** It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Marinier to include this feature for the benefit of service variety.

Regarding claim 20, Marinier, in view of Santhoff, teaches the method according to claim 15. Santhoff further teaches each second mobile radio communication terminal device sends the one radio information signal within a predetermined response period for each respective second mobile radio communication terminal device (**Each of said devices sends said position within a predetermined time, Paragraph 55**). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Marinier, in view of Santhoff, to include this feature for the benefit of service variety.

Regarding claim 21, Marinier, in view of Santhoff, teaches a method according to claim 15. Marinier further teaches a predetermined minimum accuracy of a position of each second mobile radio communication terminal device is a condition for each respective second mobile radio communication terminal device to send the acknowledgement signal (**Said mobile devices must be within a predetermined range in order for said positioning information to be used, Paragraphs 16-17**).

Regarding claim 22, Marinier, in view of Santhoff, teaches a method according to claim 15. Santhoff further teaches a time difference between a receipt of the retrieval signal and a sending the a-radio information signal by each respective second mobile radio communication terminal device is included in each radio information signal as a position parameter of the

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position information (**Said positioning information includes a time of receipt and a time of reply to determine a delay/time difference for said response, Paragraphs 54-55 and Paragraph 56, lines 1-8**). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Marinier, in view of Santhoff, to include this feature for the benefit of service variety.

Regarding claim 23, Marinier, in view of Santhoff, teaches a method according to claim 22. Santhoff further teaches a current position of each respective second mobile radio communication terminal device and/or a sending time of the radio information signal from each respective second mobile radio communication terminal device is included in each radio information signal as a position parameter of the position information (**Said positioning information includes said time of reply, Paragraph 54**). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Marinier to include this feature for the benefit of service variety.

Regarding claim 24, Marinier, in view of Santhoff, teaches a method according to claim 15. Santhoff further teaches calculating the position of the first mobile radio communication terminal device via a Round Trip Time (RTT), an Observed Time Difference of Arrival (OTDOA) using the position information included in each radio information signal, and/or a Global Positioning System (GPS) position device in the first mobile radio communication terminal device using the position information included in each radio information signal (**Said position information is used by said requesting mobile device to determine a distance between said requesting mobile device and said other mobile devices, Paragraph 56**). It would have been obvious to one of ordinary skill in the art at the time of the

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invention to modify the invention of Marinier to include this feature for the benefit of service variety.

Regarding claim 25, Marinier, in view of Santhoff, teaches a method according to claim 24. Santhoff further teaches in the calculating, position information received by the first mobile radio communication terminal device is used **(Said position information is used by said requesting mobile device to determine a distance between said requesting mobile device and said other mobile devices, Paragraph 56)**. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Marinier to include this feature for the benefit of service variety.

Regarding claim 26, Marinier, in view of Santhoff, teaches a method according to claim 15. Santhoff further teaches transmitting the position information received by the first mobile radio communication terminal device to a position determining unit in the radio network which calculates a current local position of the first mobile radio communication terminal device **(An Access Point alternatively calculates said distance of said requesting mobile device, Paragraph 101)**.

#### *Allowable Subject Matter*

Claims 27 and 28 are allowed.

#### *Response to Arguments*

6. Applicant's arguments, filed 3/9/11, with respect to the objection of claims 22 and 24 have been fully considered and are persuasive. The objection of claims 22 and 24 has been withdrawn.



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7. Applicant's arguments, filed 3/9/11, with respect to the rejection(s) of claim(s) 15 and 20-28 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the references above.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANK DONADO whose telephone number is (571) 270-5361. The examiner can normally be reached Monday-Friday, 9:30 am-6 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rafael Perez-Gutierrez can be reached on 571-272-7915. The fax phone number for the organization where this application or proceeding is assigned is 571-270-6361.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-273-8300.

/Frank Donado/  
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/Rafael Pérez-Gutiérrez/

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Supervisory Patent Examiner, Art Unit 2617